

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY LITIGATION) MDL NO. 1373
_____)
THIS DOCUMENT RELATES TO ALL)
ACTIONS)

ENTRY FOR FEBRUARY 5, 2002

The plaintiffs and defendant Ford Motor Company appeared, by counsel, this date for a conference to discuss the manner in which the plaintiffs' challenges to Ford's privilege log should be addressed. In light of the sheer length of the privilege log and the large number and variety of challenges the plaintiffs have indicated they intend to make to it, the magistrate judge understands and does not discount Ford's concerns regarding the burden of responding to those challenges. However, this court is committed to its case management schedule, and is also sensitive to the concerns of the litigants in state court proceedings who also may be impacted by this court's rulings regarding the privilege log, given the court-sanctioned efforts of cooperation between the attorneys in this MDL proceeding and those in the state courts. Therefore, the magistrate judge also understands the plaintiffs' position that it is imperative that these issues be resolved as expeditiously as possible. After carefully considering the legitimate concerns of all of the parties, as well as the court's interest in efficiently shepherding these cases to their ultimate conclusion, the magistrate judge believes that the following schedule effectively balances these interests while at the same time preserving the rights of all parties to effectively present their positions to the court for consideration:

1. If the plaintiffs wish to challenge the provision in the paragraph X(B) of the Case Management Order in this cause which exempts privileged documents generated after August 9, 2000, from the privilege log requirement, they shall do so by motion. Ford¹

¹The other defendants are also welcome to file responses if they wish, and the same time table applies to them.

shall file a response **within five business days of Ford's receipt of the motion;**² any reply in support of the motion shall be filed **within two business days of the plaintiffs' receipt of the response(s).**

2. The plaintiffs argue that Ford has waived its claim of privilege as to certain documents because of deficiencies in the form of the privilege log and/or the fact that the privilege was not asserted in a timely manner. All such arguments shall be raised in the form of a written motion. Ford shall file a response **within five calendar days of Ford's receipt of the motion;** any reply in support of the motion shall be filed **within 2 calendar days of the plaintiffs' receipt of the response(s).**
3. With regard to the plaintiffs' waiver claim, the magistrate judge assumes that the reason certain entries on the privilege log do not indicate an author, recipient, date, type of document, and/or description of document is that the information is not evident from the document itself. However, the magistrate judge will conduct an in camera review of each such document to validate her assumption. Any document challenged by the plaintiffs on that ground shall be submitted by Ford for an in camera review³ along with Ford's response to the plaintiffs' motion.
4. **On or before February 15, 2002,** Ford shall provide the plaintiffs with a list of any document on the privilege log which is not privileged in its entirety, but rather contains privileged material within it. If the document has been produced in a redacted form, Ford shall so note, and identify the Bates number of the redacted document if it differs from the Bates number listed in the privilege log. If Ford has not yet produced the document in

²Service of all motions and briefs filed pursuant to this Entry may be made by fax, mail, or hand delivery.

³Documents submitted for in camera review should be delivered directly to the magistrate judge's chambers; they should not be filed with the clerk of court.

redacted form, it shall do so **on or before February 26, 2002.**

5. The plaintiffs indicate that there are a discrete number of documents on the privilege log, which they characterize as “hot” documents, for which a determination of whether they are in fact privileged would be very helpful to the preparation of the plaintiffs’ case. The plaintiffs may file a motion challenging Ford’s claim of privilege as to this group of documents; Ford shall file a response **within five business days of Ford’s receipt of the motion**, and any reply in support of the motion shall be filed **within 3 business days of the plaintiffs’ receipt of the response(s)**. Ford shall provide the magistrate judge a copy of each disputed document along with its response, so that the magistrate judge will have them in the event an in camera review of some or all of the documents is necessary.
6. The plaintiffs indicate that they wish to challenge Ford’s assertion of the attorney-client privilege as to certain documents on the privilege log for which neither the author nor the recipient appears to be an attorney. The plaintiffs may file a motion raising this issue and listing the specific documents to which it is applicable; Ford shall file a response **within ten calendar days of Ford’s receipt of the motion**, and any reply in support of the motion shall be filed **within 5 calendar days of the plaintiffs’ receipt of the response(s)**. Ford shall provide the magistrate judge a copy of each disputed document along with its response, so that the magistrate judge will have them in the event an in camera review of some or all of the documents is necessary.
7. The magistrate judge is cognizant of the confusion concerning the database of the documents contained in the Office of General Counsel (“OGC”). The assumption on behalf of Ford’s counsel is that all documents identified in that database (and maintained therein or elsewhere) that are responsive to plaintiffs’ discovery requests, and to which there is not an assertion of privilege, have been produced. If that assumption is incorrect, the magistrate judge shall be advised immediately. Further, as to those documents to

which Ford asserts a privilege, it shall provide a privilege log, in Microsoft Access format, within ten business days of the date of this Entry. Documents that were created within the OGC, or were created by outside counsel for Ford and disclosed only to the OGC, need not be included on the log.

The magistrate judge acknowledges that she asked Ford to continue to review its previously submitted privilege log for the purpose of uniformity in format and to reconsider specific assertions of privilege. The magistrate judge appreciates Ford's willingness to continue that process, and would urge utmost diligence in so doing. However, as noted above, the resolution of privilege log issues is a matter of high priority at this point in the litigation; therefore, it is not feasible to delay the briefing of challenges to the present log beyond the schedule set forth above to take advantage of further improvements to the log by Ford.

ENTERED this _____ day of February 2002.

V. Sue Shields
United States Magistrate Judge
Southern District of Indiana

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